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ABSTRACT

The potential for being asked to supply information that is not legally useable in the employment decision-making process is a factor that can dramatically increase stress during the selection interview. Research suggests that both employers and students are often unaware of what constitutes an illegal question. Treatment of illegal questioning in textbooks varies and includes: (1) none; (2) discussion of illegal question areas; (3) presentation of advice; and (4) providing a range of response strategies and exemplary responses. Widening the range of useable response strategies and the creativity of using them can be achieved by teaching students what constitutes illegal questioning; using eight response strategies and exemplary questions for each; and providing practice applying the strategies through brainstorming and sharing with the larger group. (Four tables of data are included; 30 references are attached.) (RS)

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# Instructional Implications for Responding to Discriminatory Interview Questions

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## Instructional Implications for Responding to Discriminatory Interviewing Questions

The selection interview is clearly a very important communication event for every person who is employed or seeks employment. It is one of the few communication events in our life that has the potential for major impact. We are all keenly aware that a decision will be made regarding whether we will be a wage earner and what kind of a wage earner we will be. The recognition that this kind of decision is being made on the basis of what we say and do and the uncertainty regarding how what we say may be received undoubtedly creates high stress for the person involved. A factor that can dramatically increase that stress is the potential for being asked to supply information that is not legally usable in the employment decision-making process. Adding further to this problem is the likelihood that the interviewee has not been taught strategies for managing these questions.

The purpose of this essay is the exploration of strategies for teaching about illegal interviewing. First, the question, "Is the asking of illegal questions a serious problem?," is investigated. Next, instructional materials presented in college-level textbooks that treat selection interviewing are surveyed. Finally, a plan for teaching strategies for managing illegal questioning is presented.

### Is the Asking of Illegal Questions a Serious Problem?

One might wonder if the asking of illegal questions is a serious problem since we don't often hear much about it. The answer to this question may depend on whom you ask. Jablin and Tengler (1982) asked 74 college placement directors to respond to a survey about pre-employment screening practices. One question asked these directors was about their perception about illegal questioning in their on-campus interviews. They

responded that they perceived illegal discrimination took place in five percent of the interviews. Since these directors do not observe interviews and, therefore, have no way of knowing what questions are actually asked, any conclusion based on this data seems questionable. Beyond this, the same report revealed that the directors thought that about 40 percent of their interviewers were probably unaware of what question are illegal and discriminatory.

In a more recent research report, Scott, Pavlock, and Lathan (1985) reported that 22 of 312 college accounting majors said that they believed they were asked to answer illegal questions. Again, what is being measured is not clear. Nowhere in the report did the researchers say that these students were aware of what constitutes an illegal question.

There is evidence that the asking of illegal questions may be widespread. Springston & Keyton (1988) asked 157 Wisconsin organizations to select from a list of questions the ones that they might or would ask an interviewee. Among the 41 questions were 22 illegal interview questions. Of these 157 the organizations returning their questionnaire, 151 (96%) said that they would or might consider asking at least one illegal question. The researchers checked the validity of this data with actual interviewing practices. An individual who actually interviewed with 10 of the organizations in the survey revealed questions that were actually asked. Seven of the 10 organizations were among those who returned their questionnaire, and thus a comparison was possible. A check revealed a 76% agreement rate with the questions the hiring agent indicated on the survey he or she would ask. A further check of the difference between what these recruiters said they would ask and what they actually asked revealed that the survey data was a conservative estimate of what they would actually ask. This research was conducted in Wisconsin, but one would suspect that there

is no reason to believe that it is not typical of other regions. Thus, it seems reasonable to conclude that there is a serious problem regarding the asking of illegal questions.

The Springston and Keyton (1988) research also revealed that the problem of asking illegal questions varies by type of business activity and category of question. Organizational representatives that said they might ask quite a few illegal questions were in the Food Services/Restaurant, Human Services, Construction, Government, and Wholesale/Retail industries. The most common areas where questions were likely to be asked, based on the total average, are arrest record and conviction (56%), age (47%), and handicaps (42%). Question areas that were less likely to be asked were marital/family status (22%), religion (21%), sex (14%), citizenship/national origin (14%), and race (6%). What is clear from this research is that interviewees are likely to be asked illegal questions.

Let's examine this issue from the student perspective. Limited data collected from a group of students substantiates this claim. Twenty-nine students in a business and professional communication class studied illegal questions as part of a class assignment in interviewing. All 29 of these students indicated that there were areas of illegal questioning of which they were unaware. Further, 22 of these students (76%) indicated they had been asked at least one illegal question in an interview. This student data substantiates the data collected by Springston and Keyton.

That students are unaware of what constitutes an illegal question has also been corroborated by other research. Siegfried and Wood (1983) found that applicants they studied were generally unaware of what question areas are illegal.

Another question must be asked. "What do interviewees generally do

when they are not trained to manage illegal questioning?" The answer appears to be simple. They give the information the interviewer requests. Siegfried and Wood (1983) reported this as the usual response. They concluded that "almost any question, with the exception of traditionally taboo subjects [salary of spouse, unwed motherhood, contraceptive practices], would be answered." (p. 68)

Finally, we must ask if education in the area of illegal questioning will make a difference. Research indicates it will. Siegfried and Wood (1983) investigated this question. They compared pre- and post-test results from a group of 45 students who participated in a workshop on illegal questioning. The participants were significantly less willing to disclose any information in the illegal areas. Springston and Keyton (1988) also found that training reduces the interviewee's willingness to respond to illegal questions.

**Instructional Materials**

The second topic regarding instruction in illegal interviewing is the state of teaching materials available. Written materials intended to provide instruction in this area are generally found in two kinds of textbooks: interviewing books and business and professional communication books. The consideration here will be regarding what materials are presented in most of the available books in these two areas. The criterion for including a particular textbook in the consideration is that it contain at least a substantial treatment of selection interviewing.

Three kinds of information seem important in presenting a full treatment of illegal questioning. First, the author might present information related to identifying illegal questioning. This might take the form of a review of the law and court decisions, as well as examples of

illegal questions. Some method of checking understanding might also be presented.

Second, the author might present some means of making decisions about responding to illegal questions. This could range from general guidelines to specific strategies to achieve specific aims.

Third, the author could model exemplary answers to illegal questions. These might vary from general, generic answers to specific answers representing particular areas of illegal questioning and specific strategies. These three kinds of material will be used as a basis for organizing this report of teaching materials.

Eleven college-level interviewing textbooks were examined. These were easily classified into three groups. The first is a group of books whose authors' treatments meet only the first criterion--they discuss what constitutes an illegal question. These are:

L. J. Einhorn, P. H. Bradley, & J. E. Baird, Jr. (1982). Effective employment interviewing: Unlocking human potential.

W. C. Donaghy. (1984). The interview: Skills and applications.

C. W. Downs, G. P. Smeyak. (1980). Professional interviewing.

J. G. Goodale. (1982). The fine art of interviewing.

G. T. Hunt & W. F. Eadie. (1987). Interviewing: A communication approach.

All of these books delineate what constitutes illegal questioning from the employer's perspective, with varying degrees of specificity. They offer no help for the interviewee regarding illegal questioning. Thus, they treat illegal questioning as an organizational problem, rather than a problem experienced by both the organization and interviewee.

Three books meet the first two criteria. Interview by Marvin Gottlieb (1986) presents area-by-area information regarding what constitutes illegal

questioning. Then, he presents this general advice for the interviewee: If the information asked for doesn't seem job related, ask for an explanation before answering. If it is clearly not job related, don't answer the question. No help is provided beyond this simple advice.

Interviewing: Key to effective management by Joseph Zima (1983) presents one of the most extensive treatment of what constitutes an illegal questions of all interviewing texts checked. His advice, too, is very general. He mentions these three possibilities: Answer the question and ignore the fact that it is illegal, answer by saying that it doesn't seem relevant to the requirements of the position, and/or contact the nearest Equal Employment Opportunity Commission Office. The consequences of these various strategies are not discussed.

E. W. Skopec (1986) in Situational interviewing reviews equal opportunity laws and the concept of *Bona Fide Occupational Questions* and then offers brief advice with one exemplary response. He advises several possibilities. First, answer the question if it seems harmless. Next, he suggests feeding back to the interviewer the question in hope that it will be seen as illegal and withdrawn. Beyond this, he suggests answering the interviewer's concern. Finally, he suggests refusing to answer altogether.

Three interviewing textbooks go beyond meeting the first two criteria by providing response strategies and/or modeling of responses to meet specific areas of illegal questioning. These are:

M. Z. Sincoff & R. S. Goyer. (1984). Interviewing.

C. J. Stewart & W. B. Cash, Jr. (1988). Interviewing principles and practices (5th ed.).

G. L. Wilson & H. L. Goodall, Jr. (in press). Interviewing in context.

Sincoff and Goyer (1984) organize their advice into eight response strategies that range from answering the question without any comment regarding its legality to ending the interview and leaving immediately. They do not discuss the implications for using any of these strategies.

Stewart and Cash (1988) present their advice about answering illegal questions based on the criteria of seriousness of the EEO violation and importance of obtaining the job. They suggest that a serious violation of EEO law should be met by refusing to answer the question and reporting the violation to the person's superiors or college placement office. A moderate violation of the law, under circumstances where the interviewee wants the job, should be met with a "tactful" refusal. To the question, "How old are you?," they suggest "I don't think age is relevant if you are well qualified for the position." A mild or innocent violation should be met with an attempt to "neutralize" the problem and support the candidacy. For example, Stewart and Cash suggest the answer to "Do you plan to have a family?" be something like "Yes, I do. I'm looking forward to the challenges of both family and career. I've observed many of my women professors and fellow workers handling both quite successfully." An exemplary answer is given for illegal questions representing five different areas.

Wilson and Goodall (in press) present three criteria for ascertaining an appropriate response. First, what seems to be the intent of the interviewer? The primary interest here is whether the interviewer seems to want the information in order to discriminate illegally. Sometimes the tone of the interview will allow this judgment to be made. Second, how important is revealing the information? Perhaps, the interviewee may judge that giving the information is not particularly important or objectionable. Third, how important is securing the position? The position may so important to the interviewee that he or she is willing to risk providing the

information so that he or she can be viewed as cooperative. Wilson and Goodall present a range of eight strategies, from termination of the interview to answering the question and perceived concern, based on the work of Keyton and Springston (1989). Each strategy is illustrated with exemplary responses generated through student brainstorming.

Eleven college textbooks written for the business and professional communication course were examined. These five had no treatment of illegal questioning:

K. S. Abrams. (1986). Communication at work.

P. H. Andrews, & J. E. Baird, Jr. (1989). Communication for business and the professions (4th ed.). Dubuque, IA: Wm. C. Brown.

A. D. Frank. (1982). Communicating on the job.

W. F. Seiler, E. S. Baudhuin, & L. D. Schuelke. (1982). Communicating in business and professional organizations.

M. Treece. (1986). Successful business communication (3rd ed.).

Kathleen Abrams did provide an example of how to answer an illegal question under the topic, "answering difficult questions."

Two business and professional communication texts meet two of the criteria in that they discussed and/or gave examples of illegal questioning. These were:

R. M. Berko, A. D. Wolvin, & D. R. Wolvin. (1985). Communicating: A social and career focus (3rd ed.).

R. M. Berko, A. D. Wolvin, & Ray Curtis. (1986). This business of communicating (3rd ed.).

Four business and professional communication books met all three of the criteria. These are:

R. A. Adler. (1986). Communicating at work (2nd ed.).

C. Hamilton & C. Parker. (1987). Communicating for results: A guide for business and the professions (2nd ed.).

G. M. Phillips. (1982). Communicating in organizations.

M. S. Hanna & G. L. Wilson. (1988). Communicating in business and professional settings (2nd ed.).

Adler's (1986) advice is to decide not to answer, but "tactfully" refuse or chose to answer if answering is not too harmful. Of course, except for extreme cases, one wonders how an interviewee might assess "too harmful." He provides a few exemplary answers.

Hamilton and Parker's (1987) advice is to take one of three tactics: Tell the interviewer that the question is not clear and ask for clarification, answer the question and ask the interviewer to do the same, and answer the "fear" behind the question. No basis is given for making decisions regarding which strategy to take, but exemplary responses are provided.

Phillips (1982) advises that the interviewee go to the interview having decided whether he or she is willing to answer illegal questions. If the decision has been made not to answer, he suggests that the interviewee reply, "I'd prefer not to answer that question because it is ruled out under the Equal Employment Opportunity Act." He cautions though not to confront or appear argumentative.

Hanna and Wilson (1988) suggest that the interviewee attempt to determine the intent of the interviewer who has asked the illegal question. If it is an innocent question, the interviewee might decide to answer it. If not, then, the interviewee may chose from a range of responses exemplified in answers and alternative answers to illegal questions posed by the authors. These range from answers designed to terminate the interview to answering the interviewer's concern without directly answering the

question.

### Teaching Response Strategies to Illegal Questions

The research and instructional texts reviewed points to the teaching task to be accomplished. Students appear to be generally unaware of what constitutes areas of illegal questioning. Also, for the most part, students do not employ a range of strategies in answering an illegal question. The typical response is to merely answer the question as posed by the interviewer. The first problem suggests teaching students the law regarding illegal questioning. The second problem indicates two teaching needs. Students need to learn a response scheme that presents a range of alternatives. Then they need to learn and practice responses to illegal questions using this scheme as a guide.

### Teaching About Illegal Questions

Although the practice of the law is continually evolving, it is embodied in nine basic laws and their amendments, along with court interpretations. The specific laws of which students need to be aware are presented in Table 1.

**Table 1**
**Federal Laws that Apply to Selection Interviews and Employment**

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**Civil Rights Act (1866)**

This legislation gave all persons the same contractual rights as "white citizens." It was the first law that prohibited discrimination.

**Equal Pay Act (1963), (1972)**

This act made it unlawful to pay different hourly rates for the same work on the basis of sex. It amended the Fair Labor Standards Act. It exempts academic, administrative and professional employees. The Wage-Hour Division

of the Labor Department administers this act.

**Civil Rights Act (1964), (1972)**

This comprehensive act forbade employment or membership discrimination by employers, employment agencies, and unions on the basis of race, color, religion, sex, or national origin. It established the Equal Employment Opportunity Commission. (An amendment in 1972 allowed the EEOC to bring compliance by court action.) Provisions of this act are administered by the Office of Civil Rights of the Department of Health and Human Services and the EEOC.

**Age Discrimination in Employment Act (1967), (1978)**

This act makes it unlawful to discriminate against applicants or employees who are between forty and sixty-five years old. (In 1978, this act was amended to raise the age to seventy years of age, but exempted employees covered by collective bargaining contracts.) Some job categories are are exempted if a bona fide occupational qualification is involved. The act applies to employers with twenty or more employees. The Wage-Hour Division of the Labor Department administers the act.

**Equal Employment Opportunity Act (1972)**

This amended Title VII of the Civil Rights Act of 1964 to broaden coverage and to give the EEOC authority to bring lawsuits. It also included educational institutions under Title VII. The EEOC has administrative authority.

**Amendments to Higher Education Act of 1965 (1972)**

These amendments prohibit sexual discrimination in federally assisted educational programs and place educational institutions under the Equal Pay

Act. Sexual discrimination provisions are enforced by the Department of Education.

**Rehabilitation Act (1973)**

This act mandates affirmative action to employ and promote qualified handicapped people. It applies to federal contract holders employing fifty or more persons. The Departments of Labor and Health and Human Services administer this act.

**Vietnam Era Veterans Readjustment Assistance Act (1974)**

Employers with government contracts of $10,000 or more must take affirmative action to employ and promote Vietnam era veterans. Enforced by the Labor Department when complaints are received.

**Immigration Reform and Control Act (1987)**

This act prohibits discrimination on the basis of citizenship. Enforced by the Labor Department and Health and Human Services Department.

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In order for the student to understand how the practice of illegal questions actually works, these laws must be operationalized. This task can be accomplished by providing a list of illegal questions by area. Table 2 provides an example of several illegal questions. Some areas will need discussion as students may not see why a question is illegal. For example, "How did you learn to speak Russian?" might be a question used by an interviewer to discover national origin. Or another example, "As a handicapped person, what help are you going to need in order to do your work?"

**Table 2**

## Sample Illegal Questions by Area

**Age**

1. How old are you?
2. What is your date of birth?
3. What do you think about working for a person younger than you?

**Handicaps**

1. Do you have any handicaps?
2. As a handicapped person, what help are you going to need in order to do your work?
3. How severe is your handicap?

**National Origin**

1. Where were your born?
2. Where were your parents born?
3. Of what country are you a citizen?

**Race**

1. Do you believe that your race will be a problem in your job performance?
2. Are you of _____ race?

**Religion**

1. What is your religion?
2. What church do you attend?
3. Do you hold any religious beliefs that would prevent you from working certain days of the week?

**Marital/Family**

1. Do you have plans for having children?
2. What are your marriage plans?
3. What does your husband/wife do?

4. What happens if you or your husband/wife gets transferred to another city?

5. Who will take care of your children while you work?

6. How would you react to working for a man/woman?

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**Teaching Response Strategies**

The first step in teaching response strategies is their presentation. Response strategies, based on the work of Keyton and Springston (1989), are presented and discussed, along with examples of responses for each. The students are told that the assumption for each strategy, except the terminating strategy, is that it is used with the goal of doing the least damage to the interviewee's candidacy. Next, three criteria for making a decision about which strategy are presented and discussed. These are: 1) the perceived use of the information, 2) the importance of revealing information to the interviewee, and 3) the desire to secure the position.

Table 3 presents eight response strategies with exemplary responses. These serve as a model for the final step in teaching response strategies.

**Table 3**
**Questions and Exemplary Responses**

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1. Termination of the Interview.

Example: "It's interesting that your company uses such questions as a basis for hiring. I expect to file a complaint with the Equal Employment Opportunity Commission because you discriminate on an illegal basis.

2. Direct Refusal.

Example: "I'm sorry, this is not a question that I am willing to answer."

3. Direct Refusal with Reason.

Example: "I'm sorry, this is not a question that I am willing to answer because this information is personal."

4. Asking How Information Relates to Job Qualification.

Example: "I am not sure how this question pertains to my qualifications for this job. I'd be happy to answer it if I can understand how it pertains to my qualifications."

5. Telling that Information is Personal.

Example: "This information is personal. I don't mix my personal life with my professional life. I'd be happy to talk about my job qualifications."

6. Acknowledging Concern/Asking for Information.

Example: "I'm not sure what you want to know by asking this question. Could you tell me what it is you want to know?"

7. Answering Perceived Concern.

Example: "I take it that your question about my plans for child care is a concern about the likelihood that I may be absent from work when they are ill. I want to assure you that I see my self as a professional person and will behave in a professionally responsible manner when they are ill."

8. Answering the Question and the Perceived Concern.

Example: "I am married. If you are concerned about how my marital status might affect my staying with the school system, I can assure you that I am a professional and intend to continue working regardless of the events in my personal life.

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Students are asked to form triads for the purpose of creating responses

to illegal questions. The list of ten illegal questions, displayed in Table 4, is distributed. Each group is assigned two questions to serve as a stimulus for generating responses using the eight response strategies. Students brainstorm about possible responses using each strategy and then record the one they see as most likely to achieve the aim of remaining a viable candidate for the position. Upon completion of this task, the responses of each group are shared and discussed with the class.

**Table 4**
**Ten Illegal Questions**

1. National Origin: Where were your born? How did you come to speak Russian?
2. Handicaps: Do you have any handicaps?
3. Marital Status: What does your husband/wife do for a living?
4. Arrest Record: Have you ever been arrested for a crime?
5. Religion: Would your religious beliefs prevent you from working certain days of the week?
6. Age: [Assume you are over 40 years old.] What is your date of birth?
7. Marital/Family Status: Do you have plans for having children?
8. Race: Would race be a problem in performing your job?
9. Handicaps: Have you ever been diagnosed as an AIDS carrier?
10. Marital Status: Why are you divorced or single?

The modeling approach to learning to use response strategies to illegal questions works well. Written reports that students have submitted showing the results of their effort demonstrate that they are able to take the model responses and create alternatives of their own that employ each strategy.

These students also report that they feel more confident about their ability to respond to illegal questioning.

## Conclusion

The goals of this essay were to demonstrate that illegal questioning is a problem, to review college-level textbook materials available for teaching in this area, and to present a method and materials for teaching responses to illegal questioning.

Research suggests that the problem of illegal questioning is serious, that both employers and students are often unaware of what constitutes an illegal question, and that the usual response is to merely answer the question asked.

Treatment of illegal questioning in textbooks vary from none to discussion of illegal question areas to presentation of advice to providing a range of response strategies and exemplary responses. Many text treat illegal questioning as if it is a one-way process in that it is an organizational problem, providing only information from this perspective. Only a few texts give full treatment of illegal questioning. These see illegal questioning as a two-way communication event.

A three step process to widen the range of usable response strategies and the creativity in using them was presented. First, students must be taught what constitutes illegal questioning. Next, the widening can be achieved by teaching these eight response strategies and providing exemplary questions for each. Finally, the creativity can be achieved by providing practice applying the strategies through brainstorming and sharing with the larger group.

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